

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE
STATE OF MISSISSIPPI**

IN RE:

**ORDER OF THE MISSISSIPPI)
PUBLIC SERVICE COMMISSION)
ESTABLISHING A RULEMAKING)
PROCEEDING TO IMPLEMENT)
THE MISSISSIPPI TELEPHONE)
SOLICIATION ACT)**

DOCKET NO. 03-AD-264

FINAL ORDER ADOPTING RULE

COMES NOW, the Mississippi Public Service Commission (Commission), and issues this Final Order in which it adopts a Rule implementing the Mississippi Telephone Solicitation Act (“MTSA” or “No Call” Act).

1. PROCEDURAL BACKGROUND

The 2003 Legislature enacted the MTSA, which was signed into law by the Governor on April 9, 2003, to go into effect on July 1, 2003.

The MTSA gives the Commission the exclusive jurisdiction to administer and to promulgate rules to implement the “No Call” Act.

On April 9, 2003, the Commission issued an Order, in the above-referenced Docket, establishing a rulemaking proceeding. A copy of the proposed rules was attached to said Order. The Order directed that a copy be served “on all parties affected thereby”. The Executive Secretary of the Commission served a copy of the Order on the following entities:

The Direct Marketing Association
American Teleservices Association
U.S. Chamber of Commerce
Magazine Publishers of America
MBNA Marketing Systems, Inc.
Elderly Coalition of Mississippi
Mississippi Economic Council
Promotion Marketing Association, Inc.

Magazine Publishers of America
Sears/Miracle Ear

In addition to the above entities, the Executive Secretary also served a copy of the Order on all certificated local exchange carriers, competitive local exchange carriers, resellers, institutional service providers and interexchange carriers.

The Commission requested comments from interested persons. BellSouth Telecommunications, Inc. (BellSouth), AT&T Communications of the South (AT&T), Brooks Fiber Communications of Mississippi, Inc., MCImetro Access Transmission Service, LLC, MCIWorldCom Communications, Inc., MCI Network Services, Inc. (collectively referred to as MCI) and Sprint Communications Company, LP (Sprint) filed Initial Comments. BellSouth, MCI and AT&T filed Reply Comments.

On June 3, 2003, the Commission conducted a hearing to consider the comments filed by the parties as well as to receive any other evidence that the parties desired to present. The General Counsel of the Mississippi Public Utilities Staff (MPUS) and the Attorney for the Commission were present. The Commission's entire file in this docket, including all orders, pleadings, and the comments of the parties, was admitted into the record in this proceeding.

II. COMMISSION JURISDICTION

Pursuant to MTSA, Section 16, the Commission is given *in personam* jurisdiction over telephone solicitors for the purpose of administering the "No Call" Act. Additionally, pursuant to Miss. Code Ann., Section 77-3-5, the Commission has exclusive original jurisdiction over the intrastate business and property of public utilities. The Commission is empowered to make investigations and determinations, and, prescribe rules and issue orders regarding the control and conduct of the businesses coming within its jurisdiction, which now includes businesses involved in telephone solicitation in Mississippi, whether they are residents or nonresidents of Mississippi.

III. FINDINGS OF THE COMMISSION

MCI asserted that the “No Call” list should be kept current and that unnecessary and burdensome record keeping requirements not be imposed. MCI further proposed the utilization of an informal procedure to resolve complaints without telephone solicitors losing their right to a hearing. MCI also proposed the establishment of a workshop prior to the Commission’s implementation of a rule.

BellSouth opines that the Commission should have the ability to waive the surety bond and that a telephone solicitor should have the option of filing a letter of credit in lieu of a surety bond.

AT&T suggested that the Rule should set forth all of the definitions that are provided in the MTSA, and that a provision should be made for payment of fees by credit card. Finally, AT&T suggested that the defense set forth in MTSA, Section 15, be included in the Rule.

Sprint was of the opinion that local exchange carriers and competitive local exchange carriers should be allowed to provide “no call” information to consumers via their websites and that a clarification should be made to identify the effective dates of the “no call” list quarterly updates. Sprint also requested that the rule provide a "safe harbor" for telephone solicitors that have implemented practices and procedures to prevent prohibited telephone solicitation.

Sprint and MCI further asserted that a conflict exists between MTSA, Section 6(j) and Section A7 and A13 of the Rule.

A reading of the adopted Rule will reveal that we have incorporated many of the suggestions and concerns of the commenters into the Rule.

Although we find that the definitions set forth in the MTSA are required by law to apply to the Rule, we will incorporate them by reference for clarification. We further find that the Commission may negotiate with a telephone solicitor at any stage of the complaint resolution

process to allow for an informal procedure for resolving complaints and we have incorporated this provision into the Rule.

We find that the attached Rule allows for complaints to be handled administratively and expeditiously without abridging any party's right to an opportunity for a hearing. To further the efficiency of the process, the Commission finds that complete and timely answers under oath are necessary to process a complaint.

In response to the comments that there is a conflict between MTSA, Section 6(j) and Rule A7 and A13, we provided a cure. We specify that Rule A13 regarding recorded messages about new products or services to consumers who have an "established business relationship" with a telephone solicitor applies only to persons or entities not exempt from the MTSA. This is consistent with MTSA Section 6(j) which excepts "an established business relationship" from the "No Call" Act.

Based upon careful consideration of the entire record in this matter, the comments filed, matters presented at the hearing, and upon recommendation of the MPUS, the Commission hereby adopts the attached Rule to govern the implementation of the MTSA.

IT IS THEREFORE ORDERED, that the attached Rule governing the implementation of the MTSA is hereby adopted.

IT IS FURTHER ORDERED, that this Order shall become effective from and after July 1, 2003.

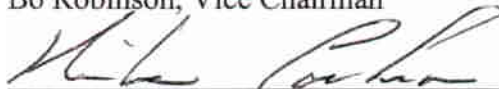
Chairman Michael Callahan voted ay; Vice Chairman Bo Robinson voted Aye; and Commissioner Nielsen Cochran voted Aye.

Dated this the 19th day of June, 2003.

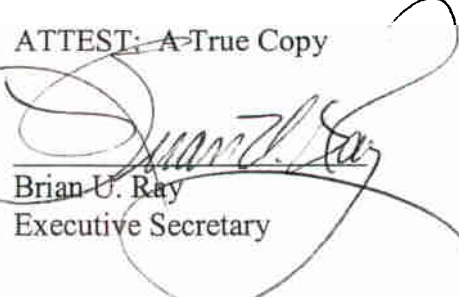
MISSISSIPPI PUBLIC SERVICE COMMISSION


Michael Callahan, Chairman


Bo Robinson, Vice Chairman


Nielsen Cochran, Commissioner

ATTEST: A True Copy


Brian U. Ray
Executive Secretary



RULES IMPLEMENTING THE MISSISSIPPI TELEPHONE SOLICITATION ACT

A. GENERAL RULES

1. The Commission shall establish and operate a “no-calls” database composed of a list of residential telephone numbers of consumers who have given notice of their objection to receiving telephone solicitations. This database will be updated quarterly.
2. Information contained in the database may be used and accessed only for the purpose of compliance with the MTSA and shall not be otherwise subject to public inspection or disclosure.
3. The Commission shall make the “no-calls” database available to telephone solicitors on CD-Rom, via an Internet download, or as a paper copy.
4. Except as otherwise provided for by law or regulation, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state unless the telephone solicitor has purchased the “no-calls” database from the Commission. The annual fee for the database shall be eight hundred dollars (\$800.00) per year if obtained via an Internet download or on CD-ROM. The annual fee for a paper copy of the database shall be one thousand dollars (\$1,000.00) per year. The fees for access to the “no-calls” database may be revised by the Commission upon proper notice of such change. The fee shall be paid at the time of registration.
5. All telephone solicitors, not exempt from the MTSA, must register annually with the Commission before conducting any telephone solicitations in the State of Mississippi. Solicitors must register via United States mail. Registration information can be found at the Commission’s website.
6. Telephone solicitors registering with the Commission shall provide:
 - a. Name, address, telephone number(s), facsimile number(s), e-mail address and federal tax ID number of the company, partnership, or individual planning to operate in the state;
 - b. Name and address of the registrant’s designated agent for service located in this state;
 - c. A surety bond, to be approved by the Commission, shall be filed with the Commission and executed for the registrant by a surety

authorized to do business in this state for the sum of fifty thousand dollars (\$50,000) to be maintained in full force and effect, in favor of the Commission to guarantee payment of any administrative penalties assessed pursuant to a violation of the MTSA, these rules, or any other applicable law or regulation. A local exchange carrier or competitive local exchange carrier holding a Certificate of Public Convenience and Necessity from the Commission may petition the Commission for an exemption from this paragraph; and,

d. Registration shall be done in the form and structure as provided by the Commission.

7. Except as otherwise provided by law or regulation, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state who has given notice to the Commission of his or her objection to receiving telephone solicitations.
8. With the exception of directory assistance and telephone directories sold or distributed by local exchange companies or their affiliates, or independent telecommunications directory publishers, no person or entity that sells, leases, or rents telephonic solicitation listings shall include in such listings any residential telephone number, if the number appears on the Commission's then current "no-calls" database.
9. Consumers may give notice to the Commission of their objection to receiving telephone solicitations by calling a toll free number, United States mail, via the Commission's web site, or facsimile. Consumers may give notice to the Commission of their revocation of the notice by writing the Commission. Consumer registration is effective for a period of five (5) years.
10. A notice of objection becomes effective according to the following schedule:

Registration received by:	List provided to solicitors:	List effective and enforceable on:
November 30 th	December 10 th	January 1 st
February 28 th	March 10 th	April 1 st
May 31 st	June 10 th	July 1 st
August 31 st	September 10 th	October 1 st

11. Consumers whose telephone number is included in the “no-calls” database who move, but maintain their current telephone number will not need to take action to remain in the data base. Consumers who are required to obtain a different telephone number must give notice to the Commission that they wish to have their new number included in the database.
12. The Commission will, on a quarterly basis, compare the “no-calls” database against the U.S. Post office National Change of Address, or similar database and purge the telephone numbers of those who have moved out of state.
13. Any person or entity who makes an authorized telephone solicitation to a consumer in this state shall announce clearly, at the beginning of each call, his or her name, the company he or she represents, the company’s Commission assigned solicitor registration number, and the purpose of the call. Such calls may only be made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard Time. No telephone solicitations may be made on a Sunday. A person or entity, not exempt from the MTSA, who makes a telephone solicitation to a consumer in this state may not knowingly utilize any method that blocks or otherwise circumvents the consumer’s use of a caller identification service, nor may the person or entity use an automated dialing system or any like system that uses a recorded voice message to communicate with the consumer unless the person or entity has an established business relationship with the consumer and uses the recorded message to inform the consumer about a new product or service.
14. A telephonic call log, with a minimum of six months data, shall be maintained by the telephone solicitor. The telephonic call log shall include:
 - a. Number called
 - b. Time called
 - c. Date called
15. All ILECs and CLECs shall retain verbatim data for a period of ninety days.
16. The definitions contained in MTSA, Section 3, are hereby incorporated by reference.

B. SEMIANNUAL NOTIFICATION TO CONSUMERS

Each local exchange company and each competing local exchange company shall provide written notification on at least a semiannual basis to each of its consumers of the opportunity to provide notification to the Commission that the consumer objects to receiving telephone solicitations. The notification may be disseminated in a manner chosen by the carrier. However, television, radio or newspaper advertisements, written correspondence, publication in the consumer information pages of the local telephone

directory, bill message or any other method of consumer notice not expressly prohibited by the Commission is allowed.

C. COMPLAINT PROCEDURE

1. A complaint may be initiated by a consumer or by the Commission. All complaints shall be in writing and filed on a form which is accessible at the Commission's website or by contacting the Executive Secretary of the Commission. A scanned copy may be transmitted electronically to the Commission. If the complaint is not filed electronically, the complainant may file the written complaint with the Executive Secretary of the Commission.
2. The Commission will evaluate the complaint and determine if it alleges a prima facie violation of the MTSA or the rules implemented pursuant thereto or any other applicable law or regulation. A copy of the complaint shall be served on the alleged telephone solicitor by the Executive Secretary of the Commission. The alleged telephone solicitor shall fully answer the complaint in detail and under oath within thirty (30) days of receipt of notice. An extension of the time in which to answer a complaint may be granted by the Commission for good cause shown. The answer shall raise every defense the alleged telephone solicitor relies on, including an MTSA, Section 6 exemption. The answer may be filed electronically with the Commission but must be signed under oath. Otherwise, the answer may be filed with the Executive Secretary of the Commission. If multiple complaints are received, the Commission may notice the complaints in multiples. If the alleged telephone solicitor does not answer the complaint fully and in specific detail and under oath within the thirty (30) day period or within the period of such extension as the Commission may grant, the Commission may find the alleged telephone solicitor liable by default. In such event, or if the answer admits a violation of the MTSA, the Commission may assess an appropriate penalty pursuant to Section 13 of the MTSA or other applicable law or regulation. The penalty assessed shall be satisfied within 20 days from service by the Executive Secretary of the Commission of the Commission's Order finding the alleged telephone solicitor liable by default or by admission, unless a stay has been entered as provided by law.
3. The Commission may make a preliminary determination based on the complaint and the answer and assess a penalty pursuant to Section 13 of the MTSA or other applicable law or regulation. The alleged telephone solicitor shall accept or reject the preliminary determination within twenty (20) days from the service by the Executive Secretary of the Commission of said preliminary determination. If accepted, the penalty imposed by the preliminary determination must be satisfied within twenty (20) days from the service of said preliminary determination. If rejected, the Commission will afford the alleged telephone solicitor an opportunity for a full hearing on the merits of the complaint. In any hearing, the complaint and the answer will be part of the record, along with all other

complaints filed against the alleged telephone solicitor. At any point in the complaint resolution process, the Commission may agree to informally negotiate with the alleged telephone solicitor.

D. VIOLATIONS

1. Any telephone solicitor found to have violated the MTSA or other applicable law or regulation pursuant to a Commission finding, or by default, may be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000) for each violation to be assessed and collected by the Commission. Each telephonic solicitation shall constitute a separate violation.
2. Failure of any telephone solicitor on which a complaint is filed to provide any information requested by the Commission, or failure to answer a complaint in specific detail and under oath, or failure to appear before the Commission at the time prescribed, may result in the Commission finding the alleged violator liable by default.
3. The Commission may proceed against the surety bond for any penalty assessed by the Commission, either by Order of the Commission finding the alleged telephone solicitor liable by default, acceptance by the alleged telephone solicitor of the Commission's preliminary determination, or by an Order of the Commission rendered after a hearing on the merits of the notarized Complaint, or otherwise, which penalty is not fully satisfied within 30 days after service of the Commission's action.